IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-408

CITY OF MILWAUKEE, THE SEWERAGE COMMISSION OF THE CITY OF MILWAUKEE, AND THE METROPOLITAN SEWERAGE COMMISSION OF THE COUNTY OF MILWAUKEE,
Petitioners,

v.

PEOPLE OF THE STATE OF ILLINOIS AND PEOPLE OF THE STATE OF MICHIGAN,
Respondents.

On Petition For Writ Of Certiorari To The United States Court of Appeals For The Seventh Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF OF THE ASSOCIATION OF METROPOLITAN SEWERAGE AGENCIES, THE NATIONAL LEAGUE OF CITIES AND THE UNITED STATES CONFERENCE OF MAYORS AS AMICI CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI OF THE CITY OF MILWAUKEE, ET AL.

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE ON BEHALF OF THE ASSOCIATION OF METROPOLITAN SEWERAGE AGENCIES, THE NATIONAL LEAGUE OF CITIES AND THE UNITED STATES CONFERENCE OF MAYORS

The Association of Metropolitan Sewerage Agencies, on its own behalf and on behalf of the National League of Cities and the United States Conference of Mayors, moves the Court for leave to file the attached brief amici curiae in the above-entitled case, and in support thereof states:

1. The Association of Metropolitan Sewerage Agencies is a non-profit association of 67 large municipal and metropolitan sewerage agencies. Its member agen-

cies have responsibility for management of most of the nation's largest municipal liquid waste treatment facilities, serving a combined population of 64 million people.

The National League of Cities is an Illinois not-for-profit corporation organized in 1933 to assist municipalities in performing their functions. Its membership includes direct member cities, state municipal leagues and state league member cities. In all, almost 15,000 cities and municipalities, both the largest and the smallest, are members of and participate in the activities of the National League. There are no more essential and ubiquitous participants in the nation's waste water treatment efforts than the cities, towns, villages and boroughs which must design, construct, maintain, operate and pay for a major portion of the water and sewerage facilities of the nation.

The United States Conference of Mayors is an organization of city governments represented through their chief elected officials, Mayors. It was organized in 1933 to promote the causes of the city, to foster responsible and effective relationships between city halls and the federal government, and to assist local governments in their responsiveness to the needs of their citizens. Municipalities and governmental entities, approximately 800 of which are represented by the U.S. Conference of Mayors, have major responsibilities for liquid waste treatment throughout the nation.

2. The members of these three organizations have taken steps, including planning, constructing and financing waste treatment facilities to meet the limitations on discharge of liquid wastes established by Congress in the Federal Water Pollution Control Act of

1972, as amended, 33 U.S.C. 1251-1376, and by the implementing regulations issued by the Environmental Protection Agency, 40 C.F.R. Part 133.

3. The decision of the Seventh Circuit Court of Appeals, in upholding relief to the plaintiff States based on principles of federal common law, grants far different and more stringent relief against the municipal defendants than that established by Congress and the Environmental Protection Agency.

4. The decision below has far-reaching consequences for municipalities, many of whom could be vulnerable to suit if it should be established that states are able to seek relief under federal common law for discharges of effluents into navigable waters at levels that are permitted and deemed acceptable under the comprehensive scheme for water pollution control enacted by Congress. The significance of this case goes far beyond the interests of the parties, with important implications for the entire national effort to abate and control water pollution from municipal sources. For this reason it is important that the Court understand fully the impact the case could have as it evaluates the specific contentions of the parties with respect to whether a Writ of Certiorari should be granted.

5. This case presents important issues of law of direct concern to the members of the amici curiae organizations:

a. Does the federal common law of nuisance survive with respect to public discharges of effluents otherwise permitted under the federal statutory scheme?

b. If so, what are the appropriate parameters to guide the lower courts in determining that public nui-

sances exist and in fashioning remedies to be applied against public waste treatment agencies to remedy the nuisances?

While these issues will be addressed by the parties, the national perspective which the amici organizations can bring is broader than the interests of the parties.

6. Accordingly, the amici curiae seek this opportunity to make known their views to the Court and to attempt to assist the Court in determining whether the issues presented by this case are sufficiently important to justify granting a Writ of Certiorari.

7. Consent has neither been sought nor obtained from the parties for the filing of a brief amicus curiae by the aforementioned organizations.

Respectfully submitted,

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BRIEF OF THE ASSOCIATION OF METROPOLITAN SEWERAGE AGENCIES, THE NATIONAL LEAGUE OF CITIES, AND THE U.S. CONFERENCE OF MAYORS AS AMICI CURIAE IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI OF THE CITY OF MILWAUKEE, ET AL.

INTRODUCTION AND LIST OF AMICI CURIAE

The three organizations joining in the submission of this brief represent municipal entities and officers who have major responsibilities for water pollution control and treatment across the nation. The Association of Metropolitan Sewerage Agencies is a non-profit corporation organized under the laws of, and located in, the

District of Columbia. Founded in 1969, the Association represents 67 large metropolitan sewerage agencies responsible for the construction and management of liquid waste treatment facilities. The Association's member agencies serve a combined population of approximately 64,000,000 people.

The National League of Cities is an Illinois not-for-profit corporation organized in 1933 to assist municipalities in performing their functions. Its membership includes direct member cities, state municipal leagues and state league member cities. In all, almost 15,000 cities and municipalities, both the largest and the smallest, are members of and participate in the activities of the National League. The activities of the League as authorized in its By-laws include "the safeguarding of the interests, rights, and privileges of municipalities". It is in this capacity that the League offers its views in the case at bar. There are no more essential and ubiquitous participants in the nation's waste water treatment efforts than the cities, towns, villages and boroughs which must design, construct, maintain, operate and pay for a major portion of the water and sewage facilities of the nation.

The United States Conference of Mayors is an organization of city governments represented through their chief elected officials, Mayors. It was organized in 1933 to promote the causes of the city, to foster responsible and effective relationships between city halls and the federal government, and to assist local governments in their responsiveness to the needs of their citizens. Municipalities and governmental entities, approximately 800 of which are represented by the U.S. Conference of Mayors, have responsibility for management

of most of the nation's large municipal liquid waste treatment facilities serving most of the nation's population. As the national organization of the nation's mayors, the United States Conference of Mayors is uniquely suited to bring to the attention of this Court the perspective of the larger cities of America on this litigation.

MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF

The consent of all parties not having been obtained, a motion for leave to file this brief has been presented to the Court contemporaneous with the presentation of this brief pursuant to Rule 42 of the Rules of this Court.

STATEMENT OF THE CASE

We respectfully refer the Court to the Citation of Opinions Below, the Statement of Jurisdiction, the Citation of Statutory Provisions Involved, and the Statement of the Case presented in the Petition for Writ of the City of Milwaukee, et al. filed with the Court in this proceeding.

QUESTIONS PRESENTED

I. Where a municipality discharges waste water into interstate waters pursuant to a permit issued under the comprehensive body of federal water pollution control statutes and regulations, should the municipality remain subject to suit based on the federal common law of nuisance for those same discharges?

II. If the federal common law of nuisance survives with respect to municipal discharges authorized by permit, may trial courts base a finding of nuisance on

any standard of proof less demanding than clear and convincing evidence?

III. If a nuisance is established under the federal common law with respect to municipal discharges, may trial courts fashion a remedy without reference to the framework of federal statutory policies and without regard to considerations of cost?

INTEREST OF AMICI CURIAE

The amici curiae are organizations of municipal entities and officers with a substantial interest in the questions presented for review. The amici and many of their members have participated actively in the development of the comprehensive body of federal legislation and regulation relating to water pollution control. Representatives of the amici have testified before Congressional committees during consideration of both the Federal Water Pollution Control Act of 1972, PL 92-500, and the Clean Water Act of 1977, PL 95-217. 33 U.S.C. §§ 1251-1376. The amici have also participated actively in many of the rulemaking proceedings pursuant to these Acts. 40 C.F.R. Parts 100-149.

More importantly, members of the amici organizations shoulder the major responsibility for implementing the ambitious program of water pollution control being undertaken across the nation in response to the federal legislation. Cities, towns, municipal sewerage agencies and specially created sanitary districts are involved in all aspects of the planning, design, financing, construction, and operation of waste water treatment facilities.

The decision of the Court below has enormous and far-reaching implications for municipalities. Literally

thousands of towns have made political, engineering and financial decisions with respect to waste treatment in reliance on the comprehensive body of federal statutory and regulatory law which emanates from the 1972 and 1977 Acts and which now governs the waste water treatment field. If the decision of the Court below is permitted to stand, the course taken by local agencies will be cast in doubt. If actions to enjoin water pollution based on the federal common law of nuisance will lie against public agencies holding valid discharge permits issued under the federal statutory scheme, these agencies will face the prospect of entirely different treatment standards being set according to the vagaries of litigation. Countless suits will be encouraged, and the standards developed by courts will not be known until long after key decisions have been made and funds committed for those treatment modes now required by federal statute and regulations.

If federal courts may prescribe treatment standards far more stringent than Congress has required—total elimination of combined sewer overflows, for example —municipalities will be faced with financial obligations far in excess of current capacity and expectations, and for which federal financial assistance will not be forthcoming.

If courts may order abatement above and beyond that required by statute on the basis of the relatively relaxed standard of proof applied below, and if courts may fashion remedies without regard to considerations of cost and efficiency, similarly situated communities across the country can be expected to face radically different waste treatment obligations.

For all of these reasons, issues litigated in this case go far beyond the interests of the nominal parties. In light of the national implications of this case and the errors committed below, the Court should grant the Writ and review this case on the merits.

ARGUMENT

1. Permits Validly Issued Pursuant to the Federal Statute and Regulations Should Immunize Municipalities from Nuisance Suits Based on Discharges Authorized by Those Permits.

The amici curiae support the position taken by Milwaukee in its Petition that the time has come for the Supreme Court to recognize the comprehensive nature of the federal statutory and regulatory scheme designed to control both intra- and inter-state water pollution. At a minimum, federal courts should be precluded from finding common law nuisances where the activity complained of is authorized by a permit issued under the federal program.

The amici commend to the Court both the reasoning and the result of a recent decision in the Federal District Court for the District of Maryland, *Potomac River Association, Inc., et al.* v. *Lundeberg Maryland Seamanship Schools, Inc.*, 402 F. Supp. 344 (1975). That case involved activities authorized by "dredge and fill" permits issued by the Corps of Engineers under § 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 403. The Court held that permits validly issued pursuant to that act would immunize from complaint activities which might otherwise be considered nuisances under the common law. It stopped short of total preemption with respect to the entire field, but limited the nuisance remedy to dredge and fill activities outside the scope of the federal permit.

We submit that municipal waste water treatment permits should be similarly respected. This Court has already implied, in its earlier consideration of the instant controversy, that the federal statutory law might evolve so as to pre-empt the federal common law of nuisance with respect to water pollution. *Illinois* v. *Milwaukee,* 406 U.S. 91 (1972). Since that opinion, there has been a substantial expansion in both the scope and detail of the regulatory scheme. Both the 1972 and 1977 Acts are landmarks in this expansion. The myriad body of regulations issued pursuant to these Acts bears further witness. Indeed, courts sustaining the common law of nuisance subsequent to passage of the 1972 Act have been careful to rely, at least in part, on the incomplete implementation of that Act as grounds for avoiding the pre-emption question. *United States ex rel. Scott* v. *U.S. Steel Corp.,* 356 F. Supp. 556 (N.D.Ill. 1973), *Stream Pollution Control Board of Indiana* v. *U.S. Steel Corp.,* 512 F. 2d 1036 (7th Cir. 1975).

Given the increasingly comprehensive nature of the federal statutory and regulatory scheme, the technical complexity of the issues involved, and the enormity of the public expenditures required to implement various waste treatment strategies, we agree with Petitioners that the time has come for Executive Branch agencies with their attendant staffs and expertise, not the federal courts, to make detailed decisions in this area. At the very least, when these decisions result in the issuance of discharge permits, and affected parties choose not to challenge those permits in the administrative and judicial forums available to them for review of those decisions, this Court should declare the nuisance remedy to be obsolete.

2. If the Common Law Nuisance Action Survives, this Court Should Set Strict Parameters on Its Use and Development by the Lower Courts.

Should the Court disagree with the fundamental proposition outlined above, it should still grant Certiorari for the purpose of establishing more precisely the parameters within which the federal common law of nuisance shall operate in this area. While straining to preserve the common law action, the Court below has failed to apply to the facts of the controversy traditional considerations of the common law of nuisance.

As the doctrine is applied in the lower courts today, nuisance remains primarily an action to protect one person's or class's property rights when they are allegedly invaded by the conduct of another. It has more to do with the former rights than the latter conduct, and in today's complex world, property rights are certainly relative, not absolute. The reasonableness of the conduct, taking into account all the circumstances, must be judged and balanced against the importance of the property interests which seek protection. *Boccardo* v. *United States,* 341 F. Supp. 858 (N.D. Cal. 1972). The reasonableness test remains appropriate where the nuisance complained of is environmental in nature. *Harrison* v. *Indiana Auto Shredders Co.,* 528 F.2d 1107 (7th Cir. 1976). The potential for injury and inconvenience to defendants, along with corrective expenditures undertaken by defendants to lessen the impact on plaintiffs, should be weighed in the balance. *Stockdale* v. *Agrico Chemical Co., Division of Continental Oil Co.,* 340 F.Supp. 244 (N.D. Iowa 1972), *Daigle* v. *Continental Oil Co.,* 277 F. Supp. 875 (W.D. La. 1967). While much of the case law has been generated by pri-

vate litigants, much of the reasoning behind these principles should apply equally to suits between public entities. Where policy considerations dictate divergent standards, it is incumbent upon this Court to define where, why and to what extent that should be the case.

If the decision below is left standing, other federal courts will be free to operate with few constraints in direct competition with the Congress and the Executive as the arbiters of municipal waste treatment responsibilities. At a minimum, this Court should establish strict standards of proof to be applied and clarify the degree to which fundamental policies of the federal statutory scheme should guide the prescription of common law remedies in the lower courts.

3. The Court Below Erred in Applying a Preponderance of the Evidence Test in a Nuisance Case Involving Competing Public Interests.

If the standard of evidence actually applied by the Court of Appeals in this proceeding is difficult to discern, it was certainly characterized as more relaxed than that which Supreme Court predecent requires. On repeated occasions this Court has placed a heavy burden on states to prove with "clear and convincing evidence" the existence of an inter-state nuisance. The landmark case, *Missouri* v. *Illinois,* 200 U.S. 496 (1906) is fully analyzed in Milwaukee's Petition, and we will not duplicate that briefing here. A later case, *Georgia* v. *Tennessee Copper Co.,* 206 U.S. 230 (1907), appeared to adopt a "preponderance of the evidence" test, although even there the Court purported to follow the dictates of *Missouri.* However, if *Georgia* introduced any ambiguity, subsequent cases on point unmistakably reinstate the "clear and convincing" standard.

New York v. *New Jersey,* 256 U.S. 296 (1921), *North Dakota* v. *Minnesota,* 263 U.S. 365 (1923).

We strenuously object to both the reasoning and the outcome of the Seventh Circuit's opinion as it concerns the appropriate standard of evidence to be applied in a case of this nature. The Court below relied upon cases involving private party defendants, *Georgia* v. *Tennessee Copper, supra,* and *Ohio* v. *Wyandotte Chemicals Corp.,* 401 U.S. 493 (1971), to arrive at the conclusion that a preponderance of the evidence was the appropriate standard of proof (Appendix at A-25 and 26). The Seventh Circuit would attach great significance to the fact that the defendants in the instant action are not sovereign states, and that the action has been tried in a federal trial court, as opposed to in the Supreme Court as a matter of original jurisdiction.

We think more appropriate considerations are the public interests to be assessed. The additional financial obligations imposed on Milwaukee by the lower courts will have to be met, at least in large measure, by municipal taxpayers. In addition, federal and state taxpayers may eventually share a portion of the ultimate costs. We are at a loss to understand why the lower courts would wish to allocate substantial tax burdens with no more convincing evidence than they might find sufficient to assess costs against an industrial polluter. And further, while a trial at the District Court level may relieve the Supreme Court of some analytical burden, we do not think this Court would want the lower courts to lightly impose enormous financial obligations in an arena so thoroughly permeated by public interest considerations. While we are not prepared to argue that this problem rises to the stature of a politi-

cal question, we think this Court would wish the federal judiciary to wear the hat of municipal tax assessor in only the most compelling of circumstances.

Because of the substantial burdens federal courts could impose upon municipalities if they are to enjoin activities otherwise authorized by the federal regulatory scheme, this Court should make clear that those remedies are to be considered only where the nuisance has been established in the first instance under the most exacting standard of evidence appropriate to a civil action.

On the face of the Seventh Circuit's opinion, it is difficult to determine why the Court found the evidence (expert witness testimony) in support of the portions of the trial court decision upheld convincing. As amply demonstrated in Milwaukee's Petition, the "proof" relied upon is sufficiently conclusory in nature to justify this Court in looking behind the findings of the lower courts to examine their foundation. *Baumgartner* v. *United States,* 322 U.S. 665 (1944). Such examination might well establish that the evidence in this case does not even rise to the standard of proof adopted by the Court of Appeals.

4. The Court Below Erred When It Required Total Elimination of Combined Sewer Overflows and Ignored Cost and Funding Considerations.

This Court has already recognized in this case that common law rights and remedies should serve the policies enunciated in federal statutory law. *Illinois* v. *Milwaukee, supra,* note 5, at 103. See also *Textile Workers* v. *Lincoln Mills of Alabama,* 353 U.S. 448 (1957).

This Court should not be misled. The permit standards imposed under the federal statute are exceedingly ambitious goals, compliance with which represents an enormously expensive national undertaking. While estimates vary considerably, and some are far more staggering than others, the Senate Committee with jurisdiction over the federal water pollution control program estimated in 1977 that the construction still needed to achieve municipal compliance with the standards set by the 1972 Act would cost in excess of $60 billion. S. Rep. No. 370, 95th Cong., 1st Sess. 2, reprinted in [1977] U.S. Code Cong. & Ad. News 4328. Despite an original authorization in the 1972 Act of $18 billion, by 1977 only approximately one-third of the nation's municipal treatment plants had achieved compliance with the standards required for construction and operations in 1977. More than 92 million persons were still served by municipal treatment plants that could not meet the statutory standards. 123 Cong. Rec. S.19646 (daily ed. Dec. 15, 1977) (remarks of Sen. Muskie).

The Court's decision below is specifically at odds with the federal statutory policy on combined sewer overflows which stops far short of requiring total elimination. As Milwaukee amply demonstrates in its Petition, the thrust of federal activity has been to control, not eliminate combined sewer overflows. Indeed, federal policy in this regard is intentionally cautious. In 1977 Congress commissioned a study by the Environmental Protection Agency of the status of combined sewer overflow problems. Clean Water Act § 516(c), 33 U.S.C. 1375(c) (1977). Recognizing that combined sewer overflows remain a widespread problem in many metropolitan areas, Congress asked the Executive to

assemble additional information on the scope of the problem, the time and money necessary to deal with it, and the technological alternatives available.

Congress mandated that the study was to include two items of particular relevance here:

> "(3) an estimate for each applicable municipality of the number of years necessary, assuming an annual authorization and appropriation for the construction grants program of $5,000,000,000, to correct combined sewer overflow problems", and
>
> "(5) an analysis of the technological alternatives available to municipalities to correct major combined sewer overflow problems." *Id.*

It is hard to imagine a clearer indication than the first of these provisions that Congress views the municipal obligation to "correct" overflow problems as related to the availability of federal financial assistance.

With respect to the mode of correction, the Senate Committee stated:

> "new technologies for addressing this problem have been brought to the Committee's attention. . . . The report should include an identification and discussion of these systems *especially where their deployment would result in cost savings* compared with conventional systems." (emphasis added) S. Rep., *supra,* at 81 (4406).

Again, it is hard to imagine a clearer indication that Congress considers cost effectiveness a key ingredient in the development of an overflow correction strategy.

Legislative intent with respect to combined sewer overflows was perhaps best summarized by Congress-

man Roberts during House debate of the Conference Report.

> "There is a need for a strong and consistent national policy on this matter, providing adequate Federal assistance for the correction of combined sewers. This study should contain *options* for the federal government *to develop* a positive role of leadership and financial assistance." (emphasis added) 123 Cong. Rec. H.12938 (daily ed. Dec. 15, 1977).

The Congress is deliberately assessing this problem on a national basis and moving towards a national program to deal with it. While that policy development is in process, federal courts should not force municipalities to spend enormous sums of money, without the benefit of federal funding, on technological solutions that the federal government may determine at a subsequent date to be inappropriate or excessive. To allow courts to develop a common law requirement for total elimination of overflows, while the legislature weighs the costs and benefits to be derived from less drastic correction measures, fails every test of logic and common sense.

Other statutory mandates provide equally convincing evidence that Congress deems both costs and the availability of federal funds as integral elements of the municipal treatment program. For a court to ignore these factors in fashioning common law remedies is to ignore one of the most important policy thrusts of the federal water pollution control program.

If the 1972 Act was ever ambiguous on this point, the 1977 Act is clear. Section 41 of Public Law 95-217 requires the identification and selection of cost effec-

tive alternatives to meet the regulatory compliance requirements of the Act, including specifically those applicable to municipal treatment plants. Clean Water Act § 217, 33 U.S.C. 1297 (1977). Section 45 of PL 95-217 similarly ties achievement of municipal regulatory objectives to the availability of federal funds by authorizing extensions in the 1977 deadline for secondary treatment where the federal government failed to make financial assistance available in a timely manner. Clean Water Act § 301(i), 33 U.S.C. 1311(i) (1977).

To fashion remedies without regard to cost or funding implications is to ignore the specific direction of Congress that these are guiding factors in municipal pollution abatement policy. Elimination of combined sewer overflow is not the only remedy ordered below which fails to take these considerations into account. The trial court also ordered a significant acceleration of the construction schedule to which Milwaukee was already committed under the statutory scheme. While this aspect of the remedy was based in part on a stipulation entered into by the parties to provide the engineering definition of the trial court's decision including earlier completion of construction activities than required by the permits, all of which activities were defined in the stipulation as technically "feasible", the court did not consider and there was no stipulation as to whether it was reasonable or efficient. There is a limit to how much engineering and construction waste water treatment and control can absorb each year without introducing distortions in the marketplace. As discussed further below, there is also a limit to municipal borrowing capacity. Finally, there is a limit to how much federal funding can be allotted to the individual states and municipalities each year. As the fed-

eral permit and enforcement program now operates, these are all factors considered in establishing schedules for the construction necessary to assure municipal compliance. If federal courts are free to accelerate these timetables without regard to these factors, the inevitable result will be to overheat the engineering and construction industries, leading to higher prices for a given product or service. Similarly, it will redistribute the overall cost burden between municipal taxpayers and federal taxpayers as towns are forced to spend money faster than their eligibility for matching federal funds can accommodate.

5. Equity Requires Consideration of Costs.

General equitable considerations also require a balancing of costs in devising remedies. The Court below has failed to carefully consider all of the public interests involved in this action. This is not a case like *Georgia* v. *Tennessee Copper Company, supra,* where the interests of a public party may be due more weight than those of a private proprietary litigant. In this case, and in others that will undoubtedly follow if common law nuisance remedies remain available, the courts should carefully balance the interests of public defendants against those of public plaintiffs. If courts are free to impose major construction obligations on municipalities without regard to associated costs, the financial consequences to municipalities will be very severe.

It is generally recognized that the federal funds authorized by the 1977 Act ($25.5 billion, spread over five years), plus the financial resources available to states and municipalities will fall far short of munici-

pal construction needs to meet only the 1983 requirements of the federal statute, much less additional expenditures imposed by courts. One commentator has suggested that to meet the 1983 statutory deadlines, state and local governments will have to spend approximately $15 billion per year for five years over and above the federal financial contribution. Hunciker, "The Clean Water Act of 1977—Modifications of the Municipal Program", 2 Harv. Envt'l L. Rev. 135-138 (1977). This money would have to be raised almost exclusively through long-term bonding and would represent roughly a six to seven fold increase in local borrowings for this purpose. There is virtually no likelihood that the municipal bond markets could absorb this burden without both a precipitous decline in municipal borrowings for non-pollution financing and tremendous upward pressure on interest rates. If courts force additional borrowings for cleanup beyond the federal program, it will only aggravate an already difficult situation.

Without assessing the impact of this consideration upon Petitioners in this case, it is obvious that courts will be affecting tax and debt burdens of municipalities, as well as the ability of municipalities to finance competing non-pollution services if they are free to impose tremendous new financial obligations for waste treatment.

As ill suited as the federal courts may be to weigh the implications of their remedies for municipal taxpayers, it would be even more dangerous for them to ignore those implications entirely as the Court below has done.

CONCLUSION

For the reasons set forth above, we submit that this case involves issues of significant national impact. We therefore urge that this Court grant the Petition for Certiorari, receive full briefs on the merits and hear oral argument in this case.

Respectfully submitted,

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